

SHB 2307 - H AMD 613

By Representative Farrell

ADOPTED 02/04/2016

1 Strike everything after the enacting clause and insert the
2 following:

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4 "NEW SECTION. **Sec. 1.** A new section is added to chapter 43.10
5 RCW to read as follows:

6 (1) It is an unfair practice for any employer:

7 (a) To fail or refuse to make reasonable accommodation for an
8 employee for pregnancy, childbirth, or a pregnancy-related health
9 condition including, but not limited to, the need to express breast
10 milk, unless the employer can demonstrate that doing so would impose
11 an undue hardship on the employer's program, enterprise, or
12 business, subject to subsection (2) of this section;

13 (b) To take adverse action against an employee who requests or
14 uses an accommodation under this section that affects the terms,
15 conditions, or privileges of employment;

16 (c) To deny employment opportunities to an otherwise qualified
17 employee if such denial is based on the employer's need to make
18 reasonable accommodation required by this section;

19 (d) To require an employee to take leave if another reasonable
20 accommodation can be provided for the employee's pregnancy,
21 childbirth, or pregnancy-related health condition, unless the
22 employee declines to accept the accommodation offered in lieu of
23 taking leave; or

24 (e) To require an employee who is pregnant, has a condition
25 related to childbirth, or has a pregnancy-related health condition
26 to accept an accommodation that the person chooses not to accept.

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1 (2)(a) Except as provided in (b) of this subsection, an employer
2 may request that the employee provide written certification from her
3 treating health care professional regarding the need for reasonable
4 accommodation if the need for reasonable accommodation is not
5 apparent to a reasonable person.

6 (b) An employer may not require an employee to provide written
7 certification, and the employer may not claim undue hardship, for
8 the following accommodations:

9 (i) Longer, more frequent, or flexible restroom, food, or water
10 breaks;

11 (ii) Seating;

12 (iii) Limits on lifting over twenty pounds; and

13 (iv) Flexible scheduling to accommodate for prenatal and
14 postnatal health care visits.

15 (3) For the purposes of this section, "reasonable accommodation"
16 means measures that enable the proper performance of the particular
17 job held or desired and enable the enjoyment of equal benefits,
18 privileges, or terms and conditions of employment. "Reasonable
19 accommodation" includes, but is not limited to:

20 (a) Allowing for time off to recover from childbirth;

21 (b) Acquiring or modifying equipment or an employee's work
22 station;

23 (c) Providing for a temporary transfer to a less strenuous or
24 less hazardous position;

25 (d) Providing assistance with manual labor; and

26 (e) Modifying work schedules.

27 (4)(a) This section does not require an employer to create
28 additional employment that the employer would not otherwise have
29 created, unless the employer does so or would do so for other
30 classes of employees who need accommodation.

31 (b) This section does not require an employer to discharge any
32 employee, transfer any employee with more seniority, or promote any
33 employee who is not qualified to perform the job, unless the
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1 employer does so or would do so to accommodate other classes of
2 employees who need accommodation.

3 (5) This section does not preempt, limit, diminish, or otherwise
4 affect any other provision of law relating to sex discrimination or
5 pregnancy, or in any way diminish or limit the coverage for a
6 condition related to pregnancy, childbirth, or a pregnancy-related
7 health condition.

8 (6) The attorney general shall investigate complaints and
9 enforce this section. In addition to the complaint process with the
10 attorney general, any person deeming himself or herself injured by
11 any act in violation of this section shall have a civil cause of
12 action in court to enjoin further violations, or to recover the
13 actual damages sustained by the person, or both, together with the
14 cost of suit including reasonable attorneys' fees or any other
15 appropriate remedy authorized by state or federal law."

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17 Correct the title.

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EFFECT: (1) Removes the reasonable accommodation requirements from the Human Rights Commission statutes and places it in the Attorney General's Office statutes; (2) Requires the AG to investigate complaints and enforce the provisions; (3) Provides for a civil cause of action to enjoin further violations and to recover actual damages plus costs and reasonable attorneys' fees or any other appropriate remedy authorized by state or federal law; (4) Provides that an employer may request an employee to provide written certification from her treating health care professional regarding the need for reasonable accommodation if the need for reasonable accommodation is not apparent to a reasonable person; and (5) Provides that the employer may not require written certification, and may not claim undue hardship, for the following accommodations: longer, more frequent or flexible restroom, food, or water breaks; seating; limits on lifting over 20 pounds; and flexible scheduling to accommodate prenatal and postnatal health care visits.

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